STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P. O. BOX 20207
NASHVILLE, TENNESSEE 37202-0207

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

MICHAEL E. MOORE
SOLICITOR GENERAL

TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

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Chairman Charles Traughber
Tennessee Board of Probation and Parole
404 James Robertson Parkway - Suite 1300
Nashville, Tennessee 37243-0850

Dear Chairman Traughber:

In 2003 and 2004 the Tennessee Court of Appeals issued a series of decisions holding, in essence, that the Board acts arbitrarily when it defers parole hearings for over six years. *Baldwin v. Tennessee Bd. of Paroles*, 125 S.W.3d 429 (Tenn. App. 2003); *Davis v. Maples*, 2003 WL 22002660 (Tenn. App. 2003); *York v. Tennessee Board of Probation and Parole*, 2004 WL 305791 (Tenn. App. 2004); *Meeks v. Traughber*, 2005 WL 280746 (Tenn. App. 2005). The Board requests guidance on how to comply.

As the chief legal officer for the State of Tennessee, I appreciate the Board's commitment to following the law as outlined by the courts and treating all inmates in a fair and equitable manner. Inasmuch as our Court of Appeals has held that it is presumptively arbitrary for the Board to defer hearings for more than six (6) years, I strongly recommend that the Board formally adopt a policy prohibiting the deferral of future parole hearings for more than six (6) years. Such a policy would demonstrate to the courts and the public the Board's good faith.

There are approximately four hundred (400) inmates presently incarcerated whose parole hearings have been deferred by the Board for over six (6) years. Failing to afford those inmates relief poses the potential for civil rights claims against the Board and its members. The Board planned to give each of those 400 inmates a new parole hearing until it received Chancellor Bonnyman's January 18, 2005, order in *York* wherein she states that the court does not have the authority to order a new parole hearing. The *York* order should not be a factor in the Board's decision.

Chancellors, under the right circumstances, can order the Board to grant new parole hearings. *See Hoover, Inc. v. Metropolitan Board of Zoning Appeals for*

Davidson County, Tennessee, 955 S.W.2d 52, 55 (Tenn. Ct. App. 1997)(discussion of judicial options available for dealing with error discovered in administrative proceedings). Chancellor Bonnyman in *York* meant only that the administrative record should be filed and the case briefed by the parties before a decision was made on whether a new parole hearing should be ordered. The chancellor would review the record to determine if the Board made an explicit finding that it is not reasonable to expect that parole would be granted at a hearing during the following ____ years and the explicit reasons given by the Board for that finding. The chancellor would review those findings for arbitrariness. Parole deferrals of more than six (6) years would be virtually impossible to sustain since the Board would be depriving future boards of the opportunity to review the inmate for parole. Further, inasmuch as the Board did not know until the *Baldwin* decision on August 15, 2003, that such explicit findings were necessary, it is doubtful that any records contain them.

Granting each inmate whose parole hearing was deferred for over six (6) years a new parole hearing will certainly function to fully implement the decisions of the appellate court provided, of course, that if the decision made at the new hearing is to deny parole, the next parole hearing is deferred no more than six (6) years.

Alternatively, the Board might choose to develop a procedure whereby inmates whose parole was deferred for more than six (6) years could request an early parole review hearing from the Board. Be aware that every decision by the Board to deny an early hearing would be subject to review by the courts. The "Request for Early Parole Review" form has a number of potential problems and needs further study.

If there is any way in which this Office can assist the Board, please let us know.

Sincerely,

PAUL G. SUMMERS
Attorney General